

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the  
License of Marlene Dokken to Provide  
Adult Foster Care.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on July 18, 2007, in Conference Room 5, Olmsted County Government Center, 151 Fourth Street South SE, in Rochester, Minnesota. The record closed at the conclusion of the hearing.

Geoffrey A. Hjerleid, Assistant Olmsted County Attorney, 151 Fourth Street SE, Rochester, Minnesota 55904-3710, appeared on behalf of the Department of Human Services (Department) and Olmsted County Community Services (County).

Marlene Dokken (Licensee), 2974 20<sup>th</sup> Avenue SE, Rochester, Minnesota 55904, appeared on her own behalf without counsel. Glen E. Cochran, N11175 670<sup>th</sup> Street, Wheeler, Wisconsin 54772, appeared with the Licensee to assist her in presenting her evidence.

**NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Cal Ludeman, Commissioner, Department of Human Services, 540 Cedar Street, St. Paul, MN 55164, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

## **STATEMENT OF ISSUES**

1. Is Marlene Dokken disqualified from providing adult foster care because a preponderance of the evidence shows she committed a misdemeanor domestic assault?

2. Should Marlene Dokken's license to provide adult foster care be revoked?

The Administrative Law Judge concludes that the Department did not establish by a preponderance of the evidence that Marlene Dokken committed a domestic assault on September 7, 2006, and therefore she is not disqualified and her foster care license should not be revoked.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. Marlene Dokken is a 49-year-old woman who has lived in the Rochester area for most of her adult life. She holds an associate of arts degree in business management and is close to completing the requirements for a bachelor's degree.<sup>1</sup>

2. In the late 1970s, the Licensee served in the U.S. Army for three years. After her discharge from the Army, the Licensee continued to serve in the Army Reserve, including activation and deployment to Panama as a Military Police desk sergeant. She served as a training noncommissioned officer for nine years. Among the duties the Licensee performed was training military police in self-defense techniques and procedures for dealing with domestic disturbances.<sup>2</sup>

3. The Licensee was a licensed child care provider in Minnesota from 1990 to 1995. She stopped providing child care when her immediate family moved to Missouri, where she lived from approximately 1995 to 1998. The Licensee returned to Minnesota after the death of her son and divorce from her husband in Missouri.<sup>3</sup>

4. In the year 2000, the Licensee married Robert Dokken and became a licensed adult foster care provider. Robert Dokken has two daughters, Lacey Poor'e and S.P., from a previous relationship. At the time of Robert Dokken's marriage to the Licensee, both girls were living with their grandmother, who is their legal guardian, in California. In about 2002, the girls began living with the Licensee and Robert Dokken in Rochester. After about one and one-half years, Lacey returned to California to live

---

<sup>1</sup> Testimony of Marlene Dokken.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

with her grandmother. S.P. remained in Rochester with the Licensee and Robert Dokken. The Licensee also cares for J.Y., her grandchild.<sup>4</sup>

5. In January 2003 the Licensee began receiving disability compensation from the Department of Veteran's Affairs for service-connected back and neck injuries received in a 1996 motor vehicle accident and for the effects of Crohn's disease.<sup>5</sup> In May 2004 she retired from service in the Army Reserve with the rank of Sgt. First Class.<sup>6</sup>

6. In late August 2006, Lacey Poor'e returned to live with the family in Rochester. She was then 18 years of age. Lacey's grandmother was no longer willing to allow Lacey to live with her because of Lacey's refusal to follow house rules. The Licensee explained to Lacey that she would be required to follow house rules in Minnesota, because her home was a foster home and the Licensee was obligated to comply with rules regarding foster care.<sup>7</sup>

7. In September 2006, the Licensee was caring for C.G., a 92-year-old woman who is a vulnerable adult.<sup>8</sup>

8. At no time prior to September 7, 2006, had the Department taken any corrective action regarding the Licensee's foster care license.<sup>9</sup>

9. The Dokken home is a split level with bedrooms to the rear of the home. The living room, dining room, and kitchen are open and connect to each other under a vaulted ceiling in the front of the house.<sup>10</sup>

10. On September 7, 2006, at about 9:30 p.m., Lacey and S.P. began arguing. S.P. was watching television in the living room, and Lacey was repeatedly poking her and making "mewing" noises into her ear. When the argument escalated, the Licensee walked over to them and pointed out that S.P. had asked Lacey to stop, and Lacey should comply with these requests.<sup>11</sup> Lacey responded by calling the Licensee a "bitch" and a "fat cow," and saying that that the Licensee could not tell her what to do because Lacey was 18 years of age. The Licensee slapped Lacey once on the cheek with the flat of her hand. Lacey responded by punching the Licensee on the arm with her fist, and the Licensee then slapped Lacey a second time. The amount of force used in slapping Lacey was insufficient to cause bruising and was intended as discipline for Lacey's physical and verbal misconduct.<sup>12</sup>

---

<sup>4</sup> Test. of M. Dokken.

<sup>5</sup> The Licensee had previously received some disability compensation for a service-connected injury to her left knee. See Licensee Ex. 16.

<sup>6</sup> Test. of M. Dokken.

<sup>7</sup> *Id.*

<sup>8</sup> Testimony of Dianne Patten.

<sup>9</sup> *Id.*

<sup>10</sup> Test. of M. Dokken.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; DHS Ex. 2 (Police Report of Officer Strain at 1-2; Police Report of Officer Riggott at 1-2).

11. Lacey then attacked the Licensee, hitting, kicking, and punching her repeatedly. S.P. left the room, found Robert Dokken in another room, and told him what was happening. Robert Dokken entered the living room, grabbed the Licensee by the throat, threw the Licensee on the floor, banged her head on the floor repeatedly, and said he would kill her if she touched one of his daughters again. S.P. then took J.Y. outside. The Licensee went to check on C.G., the foster care resident, and found that C.G. was sleeping in her bedroom.<sup>13</sup>

12. Within a few minutes, the altercation between the Licensee and Robert Dokken resumed in the kitchen. The Licensee attempted to use her cell phone to call 911, and Dokken grabbed her hand and crushed it to prevent her from using the phone. The Licensee went into her bedroom, called 911, and asked for an escort to a women's shelter. The 911 operator advised the Licensee to pack her bags and wait for the arrival of the police.<sup>14</sup>

13. Upon arrival at the Dokken residence, the police first interviewed Robert Dokken, Lacey Poor'e, and S.P. They observed redness on Lacey's cheeks and arms. They observed scratches on Robert's neck and upper torso. The police then interviewed the Licensee in her bedroom, where they observed visible bruising on the Licensee's legs and upper arm.<sup>15</sup>

14. The police concluded the Licensee "was the primary aggressor because she delivered the first physical slap."<sup>16</sup> They cited her for domestic assault and disorderly conduct, arrested her, and took her to the Adult Detention Center in Rochester. The police also cited Lacey Poor'e for domestic assault and disorderly conduct.<sup>17</sup>

15. At the jail, the Licensee was told she would be released if she signed an agreement not to have any contact with Robert Dokken. She declined to sign this agreement because she wanted to return to her home, and Dokken was in her home. At the Licensee's request, a deputy at the jail called the after-hours number for adult protection to inform the County that the Licensee had been arrested and was in jail and was concerned about the welfare of C.G., the foster care resident, and J.Y., the granddaughter.<sup>18</sup>

16. The adult protection social worker advised the licensing social worker of these developments on the morning of September 8, 2007, and both social workers went to the Licensee's home. A registered nurse, sent earlier by the County, was there

---

<sup>13</sup> Test. of M. Dokken.

<sup>14</sup> *Id.*

<sup>15</sup> DHS Ex. 2.

<sup>16</sup> *Id.* (Arrest Report, page 1 of 2).

<sup>17</sup> *Id.*

<sup>18</sup> Test. of D. Patten; Ex. 22.

and informed them that C.G. was fine and that Mr. Dokken was capable of caring for her.<sup>19</sup>

17. When the Licensee's mother, Marjorie Smith Murray, arrived at the jail that morning to pick up the Licensee, jail personnel advised her that the Licensee had vomited during the night, was severely bruised, and required medical attention. They also advised Ms. Murray to photograph the bruises on the Licensee. The Licensee was arraigned at 10:30 a.m. that morning. She was released on the condition that she commit no further assaults; the court did not require her to avoid contact with either Robert Dokken or Lacey Poor'e.<sup>20</sup>

18. In the afternoon after the court appearance, Ms. Murray took the Licensee home to collect some clothing and to pick up J.Y. While they were there, the licensing social worker arrived to drop off a background study form. The social worker heard some "loud talking" (presumably between the Licensee and Robert Dokken) about who would be allowed to stay at the home. The Licensee left to go to the Veteran's Administration Hospital at Fort Snelling. The social worker then advised Robert Dokken and his daughters that there should be no further shouting or arguing and that she intended to suggest that C.G.'s family remove her from the home. In response, "Robert grinned and said well he had fed (tube fed) [C.G.] so she had her lunch."<sup>21</sup> The foster care resident was removed from the home that evening. During that process, Robert Dokken was hostile and uncooperative. He refused to help gather together C.G.'s possessions.<sup>22</sup>

19. At the VA hospital that evening, the Licensee's mother photographed the Licensee's injuries. The photographs depict substantial bruising on the Licensee's chest, arms, and legs, and red marks on the left side of her neck. The photographs also show the Licensee's right hand was bruised, red, and swollen. In addition to the bruising on her arms and legs, the photographs depict many other reddish marks that appear to be consistent with finger marks.<sup>23</sup> The Licensee was treated and released from the hospital just before midnight with a neck brace and several pain medications.<sup>24</sup>

20. The Licensee spent the next week at her mother's home recuperating from her injuries. During that week, Lacey moved out to stay with some of the Licensee's relatives. After Lacey left, the Licensee moved back into her home, where she was subjected to continued verbal abuse by Robert Dokken. On October 4, 2006, the Licensee went to an attorney to initiate divorce proceedings.<sup>25</sup>

---

<sup>19</sup> Testimony of Dianne Patten.

<sup>20</sup> DHS Ex. 4.

<sup>21</sup> Licensee Ex. 22.

<sup>22</sup> *Id.*

<sup>23</sup> Licensee Exs. 1-15.

<sup>24</sup> Licensee Ex. 18.

<sup>25</sup> Test. of M.Dokken; Test. of M. Murray.

21. On October 6, 2006, the County advised the Licensee that she had been disqualified from direct contact with persons in foster care because a preponderance of the evidence established that she had committed a fifth degree domestic assault. The County advised the Licensee of her right to seek reconsideration.<sup>26</sup>

22. On October 8, 2006, the Licensee requested reconsideration on the basis that some of the information in the police reports was incorrect. She pointed out that she had slapped her step-daughter once after Lacey swore at her, and once again after Lacey punched her with her fist. In contrast, Lacey and Robert Dokken had inflicted substantial bruising on the licensee. In addition, the Licensee advised that she was in the process of obtaining a divorce from Robert Dokken and that she planned to see a psychologist the following week.<sup>27</sup>

23. On October 12, 2006, the County recommended that the Commissioner not set aside the disqualification or issue a variance to the Licensee.<sup>28</sup> The licensing social worker completed a risk of harm determination and concluded, on the basis of information contained in the police reports, that the Licensee had engaged in recent, deliberately violent behavior that made her a high risk to persons in care.<sup>29</sup>

24. On October 13, 2006, the County advised the Licensee of its determination that she posed an imminent risk of harm to persons in foster care.<sup>30</sup> On this same date, Robert Dokken and S.P. moved out of the Licensee's home and began living in Kasson, Minnesota.<sup>31</sup>

25. On October 24, 2006, the divorce between the Licensee and Robert Dokken became final. Robert Dokken now lives and works in Dodge Center, Minnesota, where he owns a home.<sup>32</sup>

26. In October 2006, the Licensee began seeing a counselor at the VA clinic. She began taking anti-anxiety medications and medication to stabilize her mood. She continues to see the counselor monthly, and she will continue to do so as long as necessary.<sup>33</sup>

27. On January 17, 2007, the County recommended that the Department revoke the Licensee's adult foster care license due to the existence of a disqualification that had not been set aside and for which a variance had not been issued.<sup>34</sup>

28. On January 25, 2007, the Licensee pled not guilty to the charges of misdemeanor domestic assault and disorderly conduct.<sup>35</sup>

---

<sup>26</sup> DHS Ex. 2.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; Testimony of Dianne Patten.

<sup>29</sup> DHS Ex. 2.

<sup>30</sup> *Id.*

<sup>31</sup> Test. of M. Dokken.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> DHS Ex. 2.

29. On March 5, 2007, both criminal charges against the Licensee were dismissed.<sup>36</sup>

30. On March 8, 2007, the Commissioner notified the Licensee that the disqualification would not be set aside because a preponderance of the evidence demonstrated that she had committed a fifth-degree domestic assault, and the Licensee had failed to demonstrate that she did not pose a risk of harm. As a consequence, the Commissioner ordered that the license to provide foster care be revoked.<sup>37</sup>

31. On March 16, 2007, the Licensee requested a contested case hearing on the disqualification and revocation.<sup>38</sup>

32. On March 22, 2007, the Commissioner issued a Notice and Order for Hearing scheduling the hearing to take place on June 27, 2007, at the Olmsted County Government Center.

33. On May 25, 2007, the County served the Notice and Order for Hearing on the Licensee by U.S. mail.<sup>39</sup>

34. On June 27, 2007, the Administrative Law Judge traveled to Rochester for the hearing. At that time, the Licensee indicated that she had attempted unsuccessfully to reach the Assistant County Attorney for several weeks to discuss a possible settlement of this matter, had not heard back from him until recently, and was not prepared to proceed with the hearing. The Assistant County Attorney did not object to a continuance of the hearing to permit the Licensee more time to prepare. The parties agreed the hearing would be continued to July 18, 2007.

35. The hearing took place as scheduled on July 18, 2007.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08. This is a consolidated hearing concerning the disqualification and order of revocation pursuant to Minn. Stat. § 245A.08, subd. 2a (2006).

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

---

<sup>35</sup> DHS Ex. 4.

<sup>36</sup> DHS Ex. 4.

<sup>37</sup> DHS Ex. 5.

<sup>38</sup> DHS Ex. 6.

<sup>39</sup> Affidavit of Service by Mail (May 25, 2007).

3. The Department has complied with all relevant procedural requirements of statute and rule.

4. The Department bears the burden of proof to show that the Licensee is disqualified by a preponderance of the evidence.<sup>40</sup>

5. Domestic assault is a disqualification for seven years under Minn. Stat. § 245C.15, subd. 14.

6. Whoever does any of the following against a family or household member commits an assault and is guilty of a misdemeanor: (1) commits an act with intent to cause fear in another of immediate bodily harm or death; or (2) intentionally inflicts or attempts to inflict bodily harm upon another.<sup>41</sup>

7. The Department failed to prove by a preponderance of the evidence that Marlene Dokken committed a misdemeanor domestic assault in violation of Minn. Stat. § 609.2242.

8. There is no basis in the record to disqualify Marlene Dokken or to revoke her license to provide adult foster care.

9. The conclusions are reached for the reasons set forth in the attached Memorandum, which is incorporated herein by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RESPECTFULLY RECOMMENDED: That the Commissioner rescind the revocation of the license of Marlene Dokken to provide adult foster care.

Dated: August 20, 2007

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

### **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

<sup>40</sup> Minn. Stat. § 245C.14, subd. 1(2).

<sup>41</sup> Minn. Stat. § 609.2242, subd. 1.

## MEMORANDUM

The Licensee was charged with domestic assault and arrested based on the conclusion of the police officers that she was the “primary aggressor” in the altercation because she “delivered the first physical slap.” This may be a legitimate basis on which police officers decide which of several parties should be removed from a home to prevent further domestic disputes, but it is not determinative of whether the Licensee committed an assault. At the hearing, the County maintained that every slap is an assault and that assault is not a crime requiring evidence of specific intent. On the contrary, as the Minnesota Supreme Court recently reiterated, assault is crime that requires evidence of specific intent.<sup>42</sup> Assault is defined as (1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another.<sup>43</sup> “Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.<sup>44</sup> To prove assault in this context, there must be a preponderance of evidence that the Licensee intentionally inflicted or attempted to inflict bodily harm upon Lacey Poor’e.<sup>45</sup>

The Licensee’s testimony was generally consistent with statements she made to the police at the time and to licensing authorities after the fact. She has always maintained that Lacey used foul language toward her, which provoked the first slap by the Licensee; that she slapped Lacey a second time after Lacey punched her with a closed fist; that Lacey and Robert Dokken thereafter punched and kicked her repeatedly; that Robert Dokken grabbed her around the neck and threatened to kill her; and that he tried to prevent her from calling 911 by crushing her hand.<sup>46</sup> The photographs of the Licensee’s injuries, including the injuries to her neck and hand, are consistent with her version of the events. In contrast, Robert Dokken’s reported statements to the police were not consistent with each other or with the photographic evidence. In speaking to one police officer, Robert Dokken denied hitting the Licensee at all, and he denied threatening to kill or harm her; in speaking to another officer, he admitted “[taking] her to the floor and . . . [grabbing] her by the neck.” He also denied grabbing the telephone away from the Licensee, which is inconsistent with the photographic evidence of injuries to her hand. The Administrative Law Judge has concluded that any actions taken by the Licensee after Robert Dokken became involved in the altercation were taken in self-defense.

What is reflected in the police reports, and in the Licensee’s request for reconsideration, is that the Licensee slapped Lacey Poor’e once with an open hand after Poor’e used foul and vulgar language to defy the Licensee’s request to stop bothering her sister. When Poor’e responded to the slap with a considerably more forceful punch, the Licensee slapped her once again, for the purpose of getting her

---

<sup>42</sup> *State v. Vance*, Docket No. A05-459, slip op. (Minn. July 12, 2007) (<http://www.lawlibrary.state.mn.us/archive/supct/0707/opa050459-0712.htm> ).

<sup>43</sup> Minn. Stat. § 609.02, subd. 10 (2006); *id.* § 609.2242 (domestic assault).

<sup>44</sup> *Id.* § 609.02, subd. 7.

<sup>45</sup> *State v. Vance*, slip op. at 7; *State v. Edrozo*, 578 N.W.2d 719, 723 (Minn. 1998). Neither Lacey Poor’e, Robert Dokken, S.P., nor either of the police officers testified at the hearing. There is no evidence that either Lacey Poor’e or Robert Dokken had fear of immediate bodily harm or death during this incident.

<sup>46</sup> Ex. 2 (police reports, request for reconsideration); Ex. 18.

attention and correcting her behavior. The Administrative Law Judge cannot conclude from this that the Licensee also intended to cause bodily harm to Lacey Poor'e. Despite her disabilities, the Licensee is a large, strong woman, who has trained others in military self-defense. The Administrative Law Judge has no doubt that if she had intended to cause bodily harm to Lacey Poor'e, she could have easily done so. The fact that Lacey Poor'e was not bruised and suffered nothing more than redness on her cheeks and arms, while the Licensee was truly battered and substantially bruised, lends further support to the conclusion that the Licensee did not intend to inflict physical pain or injury on Lacey Poor'e.

The only respect in which the Licensee's testimony differed from statements she allegedly made to the police was that she indicated during the hearing that Lacey spit at her and hit her first, before the Licensee slapped her. The Licensee's statements to the police were not recorded, and there is no way to know for certain whether the Licensee made similar statements at the time. The Licensee's testimony to this effect is supported by the written statement of S.P., who wrote nine months after the fact that "Lacey was the one who attacked Marlene and she even pulled her own hair out to make my Dad believe that Marlene was the one who started it."<sup>47</sup> Regardless of when Lacey Poor'e punched the Licensee, whether before or after the first slap, the determinative issue is whether the Licensee slapped her with the intention of inflicting bodily harm. Based on the testimony and photographic evidence in the record, the Administrative Law Judge concludes the Licensee did not have the requisite intent. Accordingly, there is not a preponderance of evidence to show that the Licensee committed a domestic assault. Because she is not disqualified, there is no basis to revoke her foster care license.

Even if there were sufficient evidence of intent to conclude the Licensee committed a domestic assault, however, there is still insufficient evidence to support revocation of her foster care license. The licensing social worker agreed during the hearing that, even from the jail, the Licensee's primary concern was the welfare of C.G., the foster care resident. In addition, this incident involved the Licensee's husband and her adult step-daughter. She is now divorced from Robert Dokken, who lives in another town, and Lacey Poor'e now lives in California. Furthermore, the Licensee has been seeing a counselor for almost one year, and she now agrees that she reacted wrongly to Lacey's provocation.<sup>48</sup> The record as a whole, including the Licensee's history of providing child care for five years and adult foster care for six years without other incident, does not support the inference that she might react in a similar manner to difficult behavior by a vulnerable adult.

K.D.S.

---

<sup>47</sup> Ex. 20.

<sup>48</sup> Test. of M. Dokken.